

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JANNE PARANTAINEN

Appeal No. 2006-0776
Application No. 09/595,275

ON BRIEF

Before KRASS, RUGGIERO and BLANKENSHIP, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1 and 4-6. Claims 2 and 3 have been allowed by the Examiner. An amendment filed April 28, 2004 after final rejection has been approved for entry by the Examiner.

The claimed invention relates to a system and method for choosing a channel coding and/or an interleaving scheme for a communication connection between a terminal and a base station of

a cellular packet radio system. A request message, which indicates a particular set of Quality of Service (QoS) parameters associated with a specific communication connection, is communicated to a decision-making device which functions to allocate channel coding and/or interleaving schemes to communications systems. As part of the channel coding and/or interleaving scheme allocation by the decision-making device, the QoS parameters are mapped to a particular coding and/or interleaving scheme, which scheme is communicated to the base station and terminal for application to the specific communication connection.

Claim 1 is illustrative of the invention and reads as follows:

1. A method for choosing a connection specific channel coding and/or interleaving scheme to be applied in a communication connection over a radio interface between a terminal and a base station of a cellular packet radio system where a certain decision-making device allocates channel coding and/or interleaving schemes to communication connections, comprising the steps of:

communicating a request message to the decision-making device, said request message indicating a need for setting up a new radio bearer between the terminal and the base station or changing the characteristics of an existing radio bearer between the terminal and the base station and indicating a certain set of Quality of Service parameters associated with a certain first communication connection,

mapping said set of Quality of Service parameters to a certain first channel coding and/or interleaving scheme as a part of the connection-specific channel coding and/or interleaving scheme allocation made by the decision-making device and

communicating said first channel coding and/or interleaving scheme to the base station and the terminal for them to apply said first channel coding and/or interleaving scheme in said first communication connection.

The Examiner relies upon the following prior art reference:¹

Kronestedt et al. (Kronestedt) 6,308,082 Oct. 23, 2001
(filed Oct. 06, 1998)

Claims 1 and 4-6, all of the appealed claims, stand finally rejected under 35 U.S.C. § 103 (a) as being unpatentable over the admitted prior art in view of Kronestedt.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Briefs² and Answer for the respective details.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner, the arguments in support of the rejection, and the evidence of obviousness relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellant's arguments set forth in the Briefs along with the Examiner's rationale in support of the rejection and arguments in rebuttal set

¹ In addition, the Examiner relies upon Appellant's admissions as to the prior art appearing at page 5 of Appellant's specification.

² The Appeal Brief was filed February 28, 2005. In response to the Examiner's Answer mailed on July 27, 2005, a Reply Brief was filed September 30, 2005, which was acknowledged and entered by the Examiner as indicated in the communication mailed December 20, 2005.

forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1 and 4-6. Accordingly, we affirm.

As a general proposition in an appeal involving a rejection under 35 U.S.C. § 103, an Examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the burden of going forward then shifts to Appellant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

With respect to the Examiner's 35 U.S.C. § 103(a) rejection of independent claims 1 and 6 based on the combination of the admitted prior art and Kronestedt, after reviewing the Examiner's analysis (Answer, pages 3-5), it is our opinion that the stated position is sufficiently reasonable that we find that the Examiner has at least satisfied the burden of presenting a prima facie case of obviousness. The burden is, therefore, upon Appellant to come

forward with evidence and/or arguments which persuasively rebut the Examiner's prima facie case. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Briefs have not been considered and are deemed waived [see 37 CFR § 41.37 (c) (1) (vii)].

Appellant's arguments in response to the Examiner's 35 U.S.C. § 103(a) rejection assert a failure to establish a prima facie case of obviousness since all of the claimed limitations are not taught or suggested by the applied prior art references. After careful review of the disclosures of the admitted prior art and Kronestedt in light of the arguments of record, we are in general agreement with the Examiner's position as stated in the Answer.

Initially, we find to be unpersuasive Appellant's argument (Brief, page 4) that the Examiner has mischaracterized Appellant's statements in the specification as related to the admitted prior art feature of communicating a request for setting up a new or redefining an existing radio bearer between a terminal and a base station. We agree with the Examiner (Answer, page 6) that a reasonable interpretation of what Appellant has admitted to be prior art is that request messages related to the setting up of a new connection, for example, would be "associated with a certain first communication connection" as claimed. To whatever extent, Appellant is suggesting that the admitted prior art does not

independently apply a request to "a first communication connection," no such "independently applying" language appears in the claims.

We also find to be without merit Appellant's arguments (Brief, pages 4 and 5) which attempt to distinguish over Kronestedt by asserting that, in contrast to the connection-specific channel coding of the claimed invention, Kronestedt applies a determined channel coding to all links in a cell. It is apparent to us from the line of reasoning expressed in the Answer, however, that the Examiner is not suggesting the bodily incorporation of the system of Kronestedt into that of the admitted prior art. Rather, it is Kronestedt's teaching (e.g., column 4, lines 30-34) of mapping request messages to predetermined channel coding schemes that is relied on as a rationale for the proposed combination. "The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference.... Rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art." See also In re Sneed, 710 F.2d 1544, 1550, 218 USPQ 385, 389 (Fed. Cir. 1983) and In re Nievelt, 482 F.2d 965, 967, 179 USPQ 224, 226 (CCPA 1973).

Lastly, we find no support for Appellant's contention (Reply Brief, page 2) that the Examiner erred in equating Kronestedt's measured values with the claimed QoS parameters since "QoS

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parameters are not measured values." In any case, the development of a message containing desired QoS parameters for a particular communication connection is part of the admitted prior art at page 5 of Appellant's specification.

For the above reasons, since it is our opinion that the Examiner's proposed combination of the admitted prior art and Kronestedt satisfies all of the claimed limitations, the Examiner has established a *prima facie* case of obviousness which has not been overcome by any convincing arguments from Appellants.

Accordingly, the Examiner's 35 U.S.C. § 103(a) rejection of independent claims 1 and 6, as well as dependent claims 4 and 5 not separately argued by Appellant, is sustained.

In summary, we have sustained the Examiner's 35 U.S.C. § 103(a) rejection of all of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1 and 4-6 is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective September 13, 2004).

AFFIRMED

JFR/gw

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